

PART 31

CONTRACT COST PRINCIPLES AND PROCEDURES

31.106-3 Contractor's commercial items.

~~31.106-3 Contractor's commercial products.~~

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
If facilities constituting the contractor's usual commercial products (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.	If facilities constituting the contractor's usual commercial items (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower. [FAC 90-32]

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for progress, billing, or final payment purposes. See 42.703-2 for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.709 for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription. [FAC 90-31]

31.205-1 Public relations and advertising costs.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>*****</p> <p>(f) Unallowable public relations and advertising costs include the following:</p> <p>*****</p> <p>(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.</p> <p>*****</p>	<p>*****</p> <p>(f) Unallowable public relations and advertising costs include the following:</p> <p>*****</p> <p>(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.</p> <p>***** [FAC 90-31]</p>

31.205-43 Trade, business, technical and professional activity costs.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The following types of costs are allowable:</p> <p>(a) Memberships in trade, business, technical, and professional organizations.</p> <p>(b) Subscriptions to trade, business, professional, or other technical periodicals.</p> <p>(c) When the principal purpose of a meeting, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—</p> <p>(1) Costs of organizing, setting up, and sponsoring the meetings, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;</p> <p>(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and</p> <p>(3) Costs of attendance by individuals who are not employees of the contractor, <i>provided</i> (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, symposium, etc.</p>	<p>The following types of costs are allowable:</p> <p>(a) Memberships in trade, business, technical, and professional organizations.</p> <p>(b) Subscriptions to trade, business, professional, or other technical periodicals.</p> <p>(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—</p> <p>(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;</p> <p>(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and</p> <p>(3) Costs of attendance by individuals who are not employees of the contractor, <i>provided</i> (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.</p> <p>[FAC 90-31]</p>

31.205-6 Compensation for personal services.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>***</p> <p>(g) <i>Severance pay</i>. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.</p> <p>(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply.</p> <p>***</p>	<p>****</p> <p>(g) <i>Severance pay</i>. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.</p> <p>(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply. In addition, paragraph (g)(3) of this sub-section applies if the severance cost is for foreign nationals employed outside the United States. [FAC 90-31]</p>

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(3) Notwithstanding the reference to geographical area in 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8).

[FAC 90-31]

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355):

—— (1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraph (a)(2) of this section, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, recreation, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

—— (2) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously

would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

— (3) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (a)(4) of this section).

— (4) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103-355.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b)(2), (3), and (4) of this section, and to the extent that the net amount per employee is reasonable. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.</p> <p>(2) Costs of gifts are unallowable.</p> <p>(3) Costs of recreation are unallowable, except for the costs of contractor employees' participation in sports teams designed to improve company loyalty, team work, or employee physical fitness, conducted during off duty hours at a nominal cost per participating employee.</p>	<p>(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.</p> <p>(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)</p> <p>(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.</p>

~~(4)~~ Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., ~~(i)~~ where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or ~~(ii)~~ where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

~~(5)~~ When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph ~~(b)~~(6) of this section).

~~(6)~~ Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph ~~(b)~~(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

[FAC 90-31]

31.205-14 Entertainment costs

FAR as of FAC 90-25

~~(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Costs of amusement, diversion, social activities, and any~~

FAR as revised

directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205-1 and 31.205-13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

~~(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103-355. Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.~~

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

[FAC 90-31]

31.205-22 Legislative lobbying costs.

FAR as of FAC 90-25

(a) Costs associated with the following activities are unallowable:

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(3) Any attempt to influence (i) the introduction of Federal or state legislation, or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or state legislation, or (ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

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FAR as revised

(a) Costs associated with the following activities are unallowable:

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(3) Any attempt to influence (i) the introduction of Federal, state, **or local** legislation, or (ii) the enactment or modification of any pending Federal, state, **or local** legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal, state, **or local** legislation, or (ii) the enactment or modification of any pending Federal, state, **or local** legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or * * * * * [FAC 90-31]

31.205-26 Material costs.

FAR as of FAC 90-25

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(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the price—

—(1) Is or is based on an “established catalog or market price of commercial items sold in substantial quantities to the general public” in accordance with 15.804; or

—(2) Is the result of “adequate price competition” in accordance with 15.804 and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources that produce the item or its equivalent in significant quantity.

—(3) Provided, that either subparagraph (1) or (2) above—

—(i) The price is not in excess of the transferor’s current sales price to its most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions; and

—(ii) The contracting officer has not determined the price to be unreasonable.

(f) The price determined in accordance with subparagraph (e)(1) above should be adjusted to reflect the quantities being acquired and may be adjusted to reflect actual cost of any modifications necessary because of contract requirements.

FAR as revised

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(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, **subdivisions**, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when **the item being transferred qualifies for an exception under 15.804-1** and the contracting officer has not determined the price to be unreasonable.

(f) **When a catalog or market price exception under 15.804-1(a)(1)(ii) applies under paragraph (e) of this subsection**, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements. [FAC 90-32]

31.603 Requirements.

FAR as of FAC 90-25

(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

FAR as revised

(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. **However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the following costs are unallowable:**

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

[FAC 90-31]

31.703 Requirements.

FAR as of FAC 90-25

(a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

FAR as revised

(a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. **However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the costs cited in 31.603(b) are unallowable.**

[FAC 90-31]